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Jurisdiction of the Chancery

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And the Traditionall Obscurity of its Com-
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WITH

A Short Essay on the Judicature of the Lords
in Parliament, upon Appeals from Courts of
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LONDON:

Printed for Joel Stephens, at the Hand and Star between the
Temple Gates, and sold by A. Dodd, at the Peacock without
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Court of Equity, &c.

IT hath been a received opinion of Learned Men, that those important Branches of the Common Law, touching the form and qualities of Estates and Interests in Lands, *viz.* Descents of Inheritances, Tenants by the Curtesy, Tenants in Dower, &c. and the several powers of the Tenants thereof, in and over such their own Estates and Possessions, and the Customs of Gavelkind, and the incapacities of Infants till their Ages of 21, the incapacities of Femmes Covert and other general Customs and Usages in *England*, and also the Maxims and known Rules of Law, were first *formed* and had their first Rise and Commencement, by and from Acts of Parliament; altho' the Records of those Statutes are not now to be found: For all Laws must in their Creation have *Forms* given them; because *Forms* are the only Indexes by which one Creature can be distinguished and known from another.

It

It is well known that in the *Original Formation* of our English Constitution, care was taken to plant, and fix the *Root*, and to specify the principal Branches of the Law, and to reduce the same into the *Form* of a Statute called Magna Charta : In which the Wisdom of our Ancestors appears, in choosing the most comprehensive *Negative Words*, that could be invented, to exclude Injuries and Injustice, to the end a *Dispensing Power*, and all Partiality, to favour one Man against another, might be taken away : And that *Every Man*, without exception, shall have equal right to *Claim*, and to expect to have, the benefit of that Fundamental Law.

Those *Negative Words* are exquisitely expressive and are these.

Nullus Liber Homo Capiatur, vel Imprisonetur, aut Disseisnetur de Libero Tenemento suo, vel Libertatibus vel Liberis Consuetudinibus suis, aut Exuletur aut aliquo modo Destruatur ; Nisi per Legale Iudicium Parium suorum, vel per Legem Terre: Nulli Vendemus, Nulli Negabimus, aut Differemus, Insticiam vel Rectum.

In English thus,

No Freeman shall be Arrested, or Imprisoned or Dispossessed of his Freehold (meaning his Property in Lands or Goods,) or of his

his Liberties or Free Customs, nor shall be Banished, or in any manner Destroyed: But by the Judgment or Verdict of his Peers (meaning by a *Jury of his Equals*,) or by the *Law of the Land*; We will *Sell* to no Man, we will *Deny* to no Man, we will *Delay* to no Man, Justice or Right.

The Words of this Law are so Extensive, that no Man (without his own fault) can be excepted or excluded or barred from the Benefit of them, or in other Words, no Freeman shall be *Prohibited*, to pursue his Remedy at Common Law, to *recover* his Right; neither shall his Right or Means to *defend* it, be taken from him: But then those Words must be expounded in an Affirmative Sense, *viz.* That every Man shall have the *Liberty* of his Person, and a *Property* in his Possessions, and shall not be *Dispossessed*, either of his Possession or Liberty, or of his free Customs, meaning of his Freedom in Trade, or his *Profession* in any Science, or of his *Remedy* to recover, or defend those Rights and Privileges, but by due Course of Law.

And moreover in and by the Words of Magna Charta, (*Liberties and free Customs*) are comprehended, all the Maxims and Rules of the Common Law, by which Mens Rights and Properties, and Liberties of his Person and Freedom of Trade are to be measured defended and determined.

This

This *Magna Charta* or General Law, being the Hereditary Birth-right of every Man. It becomes Necessary, to take notice of the *Judicatures* erected for the Administration of Justice, that were instituted, and to be guided by this Standard,

For this Purpose, it is well known, that by the Original Constitution, the King in his own Person was, (for many Substantiall reasons) excluded from the Administration of Justice, and that the *Judicature* of all Controversies, according to the positive Laws, was distributed and divided, amongst the 12 Judges, who represent the King and are of his Nomination, in the several Courts of Law in Westminster-Hall; and whose *Judicial Authority*, (after their nomination,) is derived, not from the King, but from the *Constitution*.

But the points of *Magna Charta*, being expressed in General Terms: Many Cases happened, by reason of *Fraud and Breach of Trust*; which occasioned great Grievances, and numerous Complaints, against which, *Magna Charta* and the Common Law, had provided no Remedies, nor had Erected any *Judicatures*, in which, those Complaints might be heard, debated and determined.

In

In this uncertainty, many were the complaints of the People, and many were their *Illegall* Addresses, and Applications made, sometimes to the ordinary Courts of Justice, and sometimes to the King himself, to obtain what, *they call'd Justice*. In which proceedings, many were the *Illegall* Stretches, and Deviations, that were made, from *Magna Charta* and the known Rules of Property; Insomuch, that *Magna Charta* was, sometimes denied to have the force of a Law, or Statute, or however, that it did not bind or exclude the King from Judicature.

And the Arguments which have been made use of to prove that *Magna Charta* did not bind or exclude the King from Judicature were that altho' the Words of *Magna Charta* are *Violent Negatives*, yet those Words were *Disjunctive*, that is, no Man shall be Imprisoned or Dispossessed, &c. *but by the Judgment*, (meaning the Verdict) of a Jury of his Equals, or by the Law of the Land; and from that *Disjunctive*, they have Argued, that, the King had Prerogatives or Authorities in Judicature, that were ancient and prior in time, or at least Coeval, with *Magna Charta*.

And that therefore those Prerogatives or Authorities, were that *Legem Terre*, or that Law of the Land, which *Magna Charta* mean

meant by those *Disjunctive* Words, and so left them Unrestrained.

To this Specious Argument, this short Answer may suffice, that there is not nor never was extant in *England*, any Law but what was and is either a Statute Law, or the Common Law; *neither of which* ever invested the King with any Authority in Judicature, to draw in question, examine, or determine, any Man's Right in his Freehold or Property, or to make his *Will* the Law; but this shorter Answer ought to put an end to the Question, *viz.* That every Word of *Magna Charta*, is by the Statute of the 25 *E. 1. cap. 1.* Declared, to be the Common Law of the Land; which hath restrained all Rights and Questions of Freehold and property, to be Tried by *Juries only*.

And therefore the People being grieved with these *Wild Constructions*, and with multitudes of *Illegal* Petitions and Suits made to the King himself; In which partiality and malice, and potent Favourites often prevailed: They (the People) by their Representatives in Parliament Claimed, and Contested for, and obtained the several material *Explanations of Magna Charta*, to be made, as follows, *viz.*

By

By the Statute of the 52. *H. 3. cap. 5. Anno Dni.* 1268. call'd the Statute of *Marlebridge*, This Declaration and Exposition was made, that *Magna Charta* ought, in every Article, as well in those, *which concerned the King*, as in those which *concerned the People*, to be holden and observed: The meaning whereof was, that, the Crown never had any *Authō- rity* to act in the Administration of Justice, contrary to any point of *Magna Charta*; and this Statute therefore, If it meant any thing, did mean, that *Magna Charta* did disable and exclude the Crown from doing any Act, to hurt or deprive the Subjects of any Rights, Liberties, or free Customs, or Trade, secured to them by *Magna Charta*.

By the Statute of the 25 *E. 1. cap. 1. 2. Anno Dni.* 1297. These expositions were made and declared, that *Magna Charta* was established by the *common Assent of all the Realm*, and ought to be holden in all points, without Disdain, and that every point of it was *the Common Law of England*, which ought to guide all Courts of Justice; and that all Judgments given, by any Judges or by any of the King's Ministers, who shall hold Plea contrary to any point of *Magna Charta*, shall be holden for *nothing*: By which 2 Statutes, it was Declared that the Words *per Legem Terre*, or the Law of the Land being one of the points of *Magna Charta*, did mean

10 Jurisdiction of the
the *Common Law*, exclusive of all *Authorities* of the Crown.

But notwithstanding *Magna Charta* was the *Root*, and these explanations were the *Branches*, or *Forms* to Point out and Manifest the Common Right of every Man: Yet many Grievances arose by reason, that such People as had Potent Friends at Court, declined the ordinary Course of the *Common Law*, and troubled the King in Person, with *Illegall* Petitions, containing false Suggestions, to injure and *Illegally* damnify the Lower Subjects, *contrary* to *Magna Charta* (meaning *contrary* to the *Forms* of the *Common Law*,) and upon those suggestions, the King did sometimes at the importunity of powerful Persons at Court, cause *Illegall Commands* to be sent under the Great Seal, to *delay common Right*, And therefore to Redress this grievance: Another explanation was made, by the Statute of 2 *E.* 3. Whereby it was Enacted, that *Magna Charta* should be observed in all points; and that it should not be commanded by the Great Seal, to disturb or *delay common Right*, meaning Proceedings at *common Law* to obtain Right, which in fact was no more, than a *Repetition* of the Statute of 25th *E.* 1. cap. 2.

But still the King was troubled, and the People vexed, with *Illegall* and false Suggestions

gestions ; And therefore, to *extirpate* and *extinguish* this Grievance, and to remove it, as well from the Kings Person, as from the People : The Commons *devised* the Statute of 37 E. 3. *cap.* 18. which the Lords passed and the King Assented to, in the Year 1363, (being now near 400 Years ago.) By which Statute, *Magna Charta* and consequently all the maxims and established Rules of the Common Law which had their Commencement by Acts of Parliament, were again confirmed, and those informal Proceedings were declared to be *Illegal*. And the recital of the Grievances was That altho' it be contained in the *Great Charter*, (which in the same Statute was then confirmed,) That no Man should be *Taken, or Imprisoned, put out of his Freehold*, without process of Law : *Nevertheless* divers People did, out of Malice, make false suggestions to the King himself, which occasioned the *first Grievance*, *viz.* That the King himself was thereby often *Grieved*, (that is, he was (as may be supposed) *Illegally* troubled, with Difficulties to find out and distinguish, which Petitions were contrary to *Magna Charta*, and which not,) *And the second Grievance* was, that divers were *Damnified*, against the form of the same Charter, (*i. e.* *Illegally* *Damnifi'd.*) And therefore the *Remedy*, against these two sorts of Grievances and *Illegal* proceedings, which the Sta-

tute provided, was, that they who made such suggestions, *should be sent with their suggestions, before the Chancellor, and there find surety to pursue such their Suggestions: And that they should incur the same Pain, in case their suggestions should be found EVIL, (to be ordered doubtless by the Chancellor,) as the other should have had, if he were Attainted: And that then Process of Law should be made against them, (meaning the Defendants) without being taken, or Imprisoned, against the Form of the same Charter and other Statutes. The Words (found EVIL) are afterwards by the Statute of 15. H. 6. cap. 4. expounded to Man, that if the matter complained of, be determinable at common Law, it is EVIL. **

This Parliamentary Transferring of these *Illegall Suggestions*, from the Kings Person, to the Chancellor, and Impowering him to examine, *bear and Determine* the Matter, and to make Orders therein, doth warrant these Conclusions, *viz.*

1. That by force and vertue of this Statute, the *Jurisdiction*, Power and Authority of the

(*) The *Chancellor* Named in this Statute is indifferently Applicable to all the King's Chancellors, *viz.* The Lord Chancellor of *England*, the Chancellor of the Court of the Exchequer, the Chancellor of the Duchy of *Lancaster*, &c.

the *Chancery*, as a Court of Equity, had its *First and Original Institution and Commencement*: And that all the Judicial power of the Chancellor, as a Judge of Equity, is *Derived* from this Act of Parliament.

2. That the recitalls in this Statute do *bind down all Men from Liberty to affirm*, that this Jurisdiction was, before this Statute, any part of the *Law of the Land*; Or that it was not first introduced, as a new Law, by this Statute; Or to say, that before this Statute, *Petitions or Suggestions* made to the King, touching the matters aforesaid, were *Legal, or Justifiable*; for such an Allegation would contradict the statute it self, and the *Authority* that made it, with such *TRADITIONS*, as have no Certainty or real Existence in them but are Chimerical and variable with every Man's Conceit and Imagination, for an Act of Parliament ought to be considered as a national Contract and Agreement, to be the Rule of Justice and Right between all Men; for a Statute is the Will of the Legislature signified in written Words, To the observance whereof every Man is a party consenting and therefore Bound.

But because the *Chancellor*, being invested with such a vast Power, might imagine his *Authority* to be unlimited; and above the

Law: *Care* was taken, even in the same Parliament, to compass in his Jurisdiction and Authority, with *Bounds*, and particularly with the *Indelible Memento*, of the Negative Words in *Magna Charta*, viz. That no part of the Common Law should be *Offended*, nor any Man *Disarmed* of his Legall Right, or of his remedy to recover that Right or of any Legal means to *defend* that Right, or that should look like a *Dispensing Power*, to unmake, or overturn, any point of *Magna Charta*, or to change any maxim or established Rule of the Common Law, (except it should be upon some substantial ground of Equity,) and therefore *Magna Charta*, or the Common Law, was in the very same Parliament appointed to be a *Boundary and a guide*, to this unlimited Power, in like manner as Shores Bound the Ocean, or Banks a River: And for that end *Magna Charta* was confirmed after this time, above twenty times, and particularly, by the Statute of the 42 d. E. 3. cap. 1. (being but 5 Years after this Statute of 37. E. 3.) *Magna Charta* was confirmed in an extraordinary manner; for it was thereby further, & *de novo* Enacted, that if any Statute be made to the contrary; it should be *holden for None*, (meaning that all Statutes should be expounded to include in them an *implied Exception* or Provision, that no *point of Magna Charta* should be, by any of them offended, changed, or disannulled.)

But

But the Penalty imposed by this Statute of 37 E. 3. viz. That the Complainer should incur the same Penalty, as the other should have had, if he were Attainted, being a *Talion Law*, and obscure, and Impracticable: Another Statute was, in the very next Year, viz. 38 E. 3, made, whereby Magna Charta was again confirmed, and the Statute of 37 E. 3. explained, and the Punishment altered, and a new Penalty appointed, viz. That the Chancellor should order the Complainer, who fails to prove his Suggestions, to be committed to Prison, till he make Satisfaction to the party Grieved, for the Slander, and for his Damages: But this Punishment trenched too near upon Magna Charta, and was found unfit to be executed, because it made the Chancellor absolute Master, of the Liberty of the Person whose Complaint he should say was found Untrue. And therefore,

By the Statute of 17 R. 2. cap. 6. Anno Dni. 1393. (being at 30 Years distance) the Power of Imprisonment was waved or suspended, and a new Power was given, to the Chancellor, viz. That he, after such Suggestions shall be duly found and proved to be UNTRUE, shall and may order Damages, according to his Discretion, to him who is so troubled Unduly, (which Damages have been expounded to mean Costs of Suit.) And therefore

therefore from this Statute it may be inferr'd that if the Suggestions of the Complainant be found to be *TRUE*, and yet the party complaining be ordered, by *Discretion*, to pay Damages, (*i. e.* Costs,) then such an order, and this Statute, are inconsistent and stand in Terms of Opposition.

And now from these 3 Parliamentary Structures or *Institutions*, it may be asserted and concluded, that the *Root* and original *Authority* of the Chancery, as a Court of Equity, is not Occult, nor like the Head of the Nile, undiscoverable, nor is founded on, any ancient Prescription, time out of mind used, nor upon any unwritten Law or Custom: But we may look upon its *Authority* and *Jurisdiction*, to be first Erected and established, by these 3 written Acts of Parliament, made for the Causes aforesaid; out of which *Magna Charta* is intirely exempted: And that that Institution is equal to the Institution of any Court of Law whatsoever, (except only, that it is not made a Court of Record, to bind Lands.) And particularly the Statute therefore of the 37 *E. 3. cap. 18.* may be accounted the *Charta Minor*, of this Court of Equity, as having made the *Jurisdiction personal only*; and that the Memento of *Magna Charta*'s negative Words, as the *Root*, and all its explanations as *Branches*, in relation to Judgment at Common Law, which bind proper-

ty and Freehold, were appointed to compass in, this new Jurisdiction, as an Inseparable Monitor, or Attendant, to put in mind: That *no Dispensing Power* to change, or to make any Order, to unmake or to change, or controul, any point of Magna Charta, or any Maxim or Established Rule of the *Common Law*; ought to be assumed or exercised; for Magna Charta, and its *Branches*, are reserved and exempted as the *Noli me tangere*: And consequently it may be asserted, that there never was, nor now is, any Power residing in any Person whatsoever, *to hear or determine*, any Cause, touching Lands, or to *Condemn or Commit* any Subject *to Prison*, otherwise than according to *Magna Charta*, and the Statutes aforesaid. And therefore that Assertion brings in Question, the *Authority* of the Orders, made by the Lord Chancellor Clarendon, and the Master of the Rolls, (Sir Harbottle Grimston,) touching Councillors and *Commitments*: Because they seem to be Legislative, and to exceed the Bounds, in which the Power of this Court, is to be compassed in: For as to the Statute of 2 E. 3. the Learned Judge Fitzherbert was of Opinion, that those *Commands*, under the Great Seal, to delay common Right, contrary to Magna Charta, were (without that Statute) void, and ought to have been holden for *Nothing*, according to the Explanation before made, by the Statute of 25 E. 1. cap. 2. Fitz. N. B. 240.

This new Jurisdiction or Court of Equity, being thus instituted and bounded, it is plain, that all *necessary Incidents* were by those Statutes, together with the Jurisdiction it self, tacitely *Given and Granted*, to enable the Court to execute its Power (except incidents contrary to Magna Charta) for the Statute of 37 E 3, cap. 18. expressly Directs, that upon the Lodging the Suggestion (or Bill of Complaint) before the Chancellor and surety found to pursue it, *Process of Law*, should be made against the Defendants, without being *Taken, or Imprisoned*, against the Form of the great Charter: And therefore this Statute is the true foundation of the *Authority*, which impowered the Chancellor to frame and issue out the new Writ called a Subpena *De quibusdam Certis de Causis*, commanding the Defendants (without Arresting them) to appear and answer the suggestions of the Petitions (now called Bills in Chancery) and also *process of Contempt*, for not obeying those Commands: And also *process of Contempt*, for disobedience to the final Orders and Determinations made, by that Court, pursuant to those Statutes: *Without*, which Authority, the whole Jurisdiction would be Eluded, and rendered useless; and upon this Institution, the Oath of the Chancellor was new framed, viz. *That he should do Right to all manner of People, Poor and Rich, after the Laws and Usages of this*

this Realm: For the Words: (*All manner of People*) can refer only to this new erected Court of Equity, which brings before him, *a'l manner of People*, and this Oath may be thus illustrated, *viz.* the Chancellor represents the King, that is personates the King in his Chancery, and therefore he, as such Representative, doth by taking this Oath, accept or take into his Care the Laws of *England*, to keep and observe the same, on the King's behalf and to perform his Majesties Oath to his People, that is not to deny or delay Justice or Right of property, and therefore in case the Chancellor should break such his Oath, that Breach is so heinous, that the Law accounts the offence equal to his wilful breaking, (as much as in him lyes) the Kings Oath. This Oath therefore makes it necessary, that such a Judge of Equity should be well acquainted with those Laws and Boundaries, and especially with the Rules of Property, or else how shall it be known, if he deviates, whether he deviates inadvertently, or presumptuously.

From this Statute it may be inferred, that People before the making thereof, were sometimes *Illegally Arrested and Imprisoned*, and compelled to appear to, and answer Petitions made to the King himself; because this Statute appointed *Process of Law*, to be made *without being Arrested or Imprisoned*, which

Process must necessarily be the said Writ of *Subpena*, that was by Authority of this Statute framed, and may therefore be called a *Legal Process*.

And here Notice may be taken of *Injunctions*, as necessary Concomitants to this Judicature, and of the nature of them, and when they ought to be *Temporary*, in order to bring the cause in Equity, into a proper Way, to be determined: And whether ever they ought to be, and in what Cases, *Perpetual*. But the Learning of that matter would carry this Speculation further than was intended, altho' it will come hereafter, properly to be touched upon, as a Problem of Power, *viz.* Whether a Court of Equity, which the Common Law hath compassed in, with Bounds, may assume a Jurisdiction or *Dispensing Power* to pass over those bounds, and *bind its Binder*: And say to *the Common Law*, by an Injunction or Prohibition, hitherto shall thy Course proceed, but no futheror that such a determinate number of *Trials* of Right to a Freehold, shall be had and no more. But this difficulty calls for further Assistance, and for that reason is at present Postponed, save only, that it is observable, that there is no substantial Difference between an *Injunction* in Chancery and a *Prohibition* at common Law, in Regard the *Commanding Words* in both, are of the same Tenor: For the Words of

an *Injunction* in Chancery, are, we *Command* and firmly injoin you, that you *Desist* from all further Prosecution at Common Law, &c. And the Words of a *Prohibition*, at *Common Law*, are, we *prohibit* and firmly Injoin you; that you shall not proceed further in the Spiritual Court, or in the Court of Admiralty, &c. So that *both Commands* in the *Injunction*, and in the *Prohibition*, Sound, in stopping the Proceedings, and taking away the *Remedy*, in the respective Courts of Common Law: And in the Ecclesiastical Court, and in the Admiralty, &c. and are therefore *Both of the same Import*.

The next thing that comes under consideration, is, the manner and method of *Trials or Examens*, used in this High Court of Equity, to Try the *Truth* or *Falshood* of those Suggestions, which were directed to be be sent from before the King to the Chancellor, (now called Bills in Chancery) which method of *Trials* or *Exam ns* must be admitted to be very different from *Magna Charta*: For the *Examen* or *Trials* instituted by *Magna Charta* are to be made by a Jury of 12 Men upon their Oaths, and by Witnesses Examined before the Jury, as Judges, *publickly*, Face to face, in open Court, in the presence of both parties interested: Where false Witnesses being confronted and cross Examined, are often detected and exposed, and sometimes

sometimes *Truth* forces its Way through their own Mouths; *Whereas* in Chancery, a contrary *Examen*, or an *aliud Examen* or Way of Tryal of Facts, hath been used and practiced, as the Foundation upon which that Jurisdiction subsists, *viz.* The Tryal hath been by *Depositions of Witnesses*, examined in private, and taken down in writing, where neither of the contending Parties are permitted to be present, or to know what is sworn by the Witnesses, and after these *Depositions* are so written and published, the Lord Chancellor sits as *Judge and Jury* to hear the Evidence read, and to determine whether those Suggestions are *true* or *false*, and if his Lordship believes them to be *true*; then he is to order what he, in his *Discretion*, deems to be equal, just and good, so always that the common Law be not *Offended*; For if a Matter of *Fact*, upon which an Equitable Title to an Inheritance is grounded, be controverted, and variety of Proof is made thereof, *that fact*, and the *Truth* of it, ought to be sent to some Court, to be tryed by a *Jury* at common Law, before this Court of Equity can, or ought to make any Determination.

But in this Case, it is proper to observe, that whatsoever was the Ancient Business of the Master of the Rolls in the Court of Chancery, (which I do not pretend to Describe) his Office was an Office of much greater Antiquity,

tiquity, than the first Institution of the Court of Equity in Chancery, for we find that near 100 Years before the first Erection of that Jurisdiction, viz. in the Year 1288, the Great King *Edward* the first, upon the Peoples Outcries, caused and countenanced a strict and severe Inquisition to be made in Parliament to find out, and hear Complaints, and punish indirect Practices and Offenders in the Administration of Justice, and that *Thomas Litbbury*, then Master of the Rolls, together with 10 of the 12 Judges, and other Officers and Ministers of Justice, were accused in that Parliament, and convicted of *Corruption and Partiality*, and *Litbbury* the Master was fined 1000 Marks, * This general Depravity and Partiality in Matters of Justice, was in those Times a lamentable Grievance; but in these happier Times, no Man can, or dares approach that Judicial Office with Temptations.

But in Process of time many Grievances arose and daily increased, and the Cause or Fountain of those Grievances was, by reason no Rules of Equity ever were or can be fixed or instituted to Bind the Judges of Equity; but every Judge of Equity hath in his own time made such Decrees and Orders as seemed right and good in his own Mind; and if a Precedent hath been wanting, and it hath been objected, that the like had never been

*Eyrrel 56.

done,

done, many of them have answered, they would make a Precedent, and therefore all that the Parliament could do or have done, hath been to fix and appoint stronger and plainer Bounds to compass in, the extraordinary Power of this Jurisdiction of the Chancery, as appears from these four Instances, viz.

I. The *first Instance* was, That in so short a time as within 9 Years after this Court of Equity in Chancery had its first Institution and Commencement, and was compleated by the Statute of the 17th, of *Richard* the 2d, *Anno Dom.* 1393, Complaints were made for double Vexations, and therefore an Act of Parliament was made in the 4th, Year of King *Henry* the 4th, cap. 23. *Anno Dom.* 1402, whereby those new Grievances were Redressed, viz. It was Enacted that new Examinations in Chancery, of Matters of Fact, after the same had been tryed by Juries, or otherwise tryed by due Course of the common Law, should not be attempted, but were prohibited: for the Verdict of a Jury, is by *Magna Charta* called a Judgment.

II. Another Grievance was, That People were vexed by Bills in Chancery, and by Writs of *Subpœna* purchased and sued out thereupon, for Matters *Determinable at common Law*; and therefore the *second Instance* was, That to Redress

Redress this Grievance the Statute of 15 H. 6. cap. 4. *Anno Dom.* 1435. was made, whereby it was Enacted, that *no Writ of Subpena* should be granted, till Surety should be found, to satisfy the Party Grieved, his Damages and Expences, if so be the Matter of the Bill be not made *Goad*, that is, Equitable, and not determinable at common Law.

And yet after all these Steps made, for Instituting a Court of Equity in Chancery, and Directing its Process and Proceedings, that celebrated Author *Saint Germin*, who, in the 23d of *Henry the 8th*, *Anno Dom.* 1531. wrote the Learned Book called *Doctor and Student*, did, as a *Traditional Writer*, without knowing the true Source, Assert, that Bills in Chancery, and the Writs of *Subpena* and *Injunctions* sued out thereupon did not arise from any special Grounds of Law, but were Proceedings *Indulged or suffered by the common Law*.

And according to this Author, we find in Lord *Coke's* 4th Institute, page 86. That the two great Chief Justices *Popham* and *Anderson*, and the Chief Baron *Periam*, and 6 other Judges in 43 *Eliz.* *Anno Dom.* 1601. were of Opinion, that the Court of Equity in Chancery, was founded on antient Prescription, time out of mind used, or *ab Initio* of this Government; and that the great Lord Chief
D Justice

Justice *Hobart*, in his Report of the Case between *Martin and Marshal*, page 63, held, with his said Predecessors, the same Opinion, and therefore if I should presume to call these Opinions *Traditional*, I should account myself audacious if I were not supported by the several Statutes before insisted on, *Against* which no Prescription nor Opinions, altho' of the most Learned ought to be heard or admitted: For no *Traditional* Law, or Opinion, or Judgment, can stand against positive Laws Enacted by Authority of Parliament; and further, it may be added, *Quod non legitur, non Creditur*, 4 Inst. 304.

This Place therefore affords an Opportunity to shew, That the Reason of writing this *Research* is, because the learned Tracts that have been lately published on the History of the Court of Chancery, have positively *Asserted*, and endeavoured to *Prove*, that the *Power* and *Authority* of that Court is *Absolute*, which, if believed, must necessarily misguide those who Preside; for a Power that is *Absolute* from all Laws, must be a Power to *Dispen*ce with Laws, and therefore this *Research* is written to shew, and to endeavour to *prove*, that there are certain Bounds fixed and instituted, by which the *Power* and *Authority* of that Court of Equity is compassed in, and over which it ought not to pass.

But

But that Power did presumptuously pass, and wantonly Sport itself, in the long Space of 15 Years, whilst Cardinal *Wolsey* was Chancellor, as may be seen in Lord *Coke's* 4th Institute, page 89, and 92; For this Cardinal having for a long time enjoyed all the Power, Insomuch that no Complaints could find Avenues to separate him from the King: He, the Cardinal Chancellor, tho' he knew that the Orders he was about to make, were unlawful, yet he in his Presumption made no Difficulty to Order and Decree the very Things, he knew were unlawful.

But still notwithstanding all the Provisions before Enumerated, the *Power* of Courts of Equity broke thorow all their Bounds, and overflowed all their Banks, and especially in the Courts of Equity holden in the Marches of *Wales*, and in the Northern Parts, and in the Courts of the Dutchy of *Lancaster*, and of the *Exchequer* of the County *Palatine* of *Chester*; Great Excesses were exercised, for the Judges of those Courts, Dispensing with the common Law, and Invading the Right of Property, and casting the Statutes behind their Backs, laid about them, as if they had no Bounds or Limitations.

III. And therefore the *Third Instance* was, That in order to explain all the Statutes afore-

said, and to restrain the Jurisdiction of those Courts; and (as is supposed) the Jurisdiction of *all Courts of Equity*, and to repair the old, and fix new Bounds, It is by the Statute made in the 16th of King *Charles* the 1st. cap. 10. Declared and Enacted, That the King's Majesty (meaning his Ministers, the Lord Chancellor, or any other Judge of Equity) hath not, nor ought to have, any Jurisdiction, Power, or *authority* to Examine, draw into Question, Determine, or dispose of the Lands or Tenements, Goods or Chattles of any Subject by *English* Bill, or Petition, or by any other Arbitrary Way; But that all Questions touching the same shall be Determined in the ordinary course of Justice, and by the ordinary course of Law, (meaning according to *Magna Charta*) and that if any Lord Chancellor, or Lord Keeper, Bishop, Temporal Lord, Judge, or Justice whatsoever, shall offend, or do any thing contrary to the Purport, true Intent and Meaning of this Law, Then he or they shall, for such Offence, Forfeit to the Party Grieved, the Sum of 500*l.* to be Recovered in any Court of Record at *Westminster*.

This Statute hath therefore Reduced not only the four Courts before-named, but (as is apprehended) all other Courts of Equity to that Jurisdiction, which by the Statute of 37 *E.* 3. cap. 18. was at first Instituted, to
which

which the *Memento* of *Magna Charta*, or the common Law, was, as Bounds thereto, fixed and annexed, *viz.* That the *Right of Tryals by Juries*, and by the due course of Law shall not be *Dispensed* with, or *Denied* to any Man.

But it is objected to this Statute, That there is in the latter End of it, a Proviso which Enacts, that this Statute, and the several Clauses in it, shall extend only to the Court of star-Chamber, and 5 other Courts named in that Proviso: And therefore according to the Rule of *Exceptio format Regulam, in rebus non Exceptis* So in the Case of a Restrictive Proviso, this Proviso *format Regulam in Curijs non restrictis*: And consequently this Statute affirms, that a *Dispensing Power* which is taken from the other Courts, remains in Chancery, Because the Court of Chancery is not named in that Proviso.

Answer. This negative Declaration made by the Legislature is general, *viz.* That the *King hath not*, nor ought to have, any Jurisdiction, to Question or Determine the *Right or Property* of any Subject, by the Method of Proceedings used in any Court of Equity: And therefore the Objection, That this negative Declaration, being to extend only to the 6 Courts mentioned in the Restrictive Proviso, doth infer and imply the *Affirmative, viz.* That the King hath, by Vertue of the Proviso,

so, a Jurisdiction given him in Chancery, to proceed in those Methods contrary to *Magna Charta*, which must necessarily be a Construction repugnant and inconsistent with the very End and Purpose of th^e Statute itself, and in that respect the Proviso must be like meer Surplusage, Void and of none Effect, because it is *Destructive* to that whole Statute, in which it is incorporated, and would leave the Subject in a far worse Condition than it found him, for altho' it redress Grievances in those particular Courts, yet it would Create a new one in others, far more extensive, and so work an Effect contrary to the Cause, and contrary to the full and express Intention of the Makers.

This Answer may be illustrated by this Instance, *viz.* The King hath no, by the Constitution, any Power to *Impose* Taxes on any of the Subjects of *England*, without a Grant thereof in Parliament; now if the King, Lords and Commons, should by an Act of Parliament Declare and Enact That the King *hath not*, nor ought to have, any Power to *Impose Taxes* on any of the Subjects of *England*, but the same ought to be *Imposed* in the ordinary Course by Grants thereof in Parliament, and should by the same Act inflict Penalties on such of the King's Officers as should offend this Law; *Provided* that this Act and the several Clauses therein contained, shall be

be Expounded to *extend only* to the 4 Northern Counties, would not an Inference, that the King hath, by Vertue of the Provilo, a Power given him to *Impose Taxes* on any Subjects out of those 4 Counties, be a monstrous inference, and *Dest ructive* of such an Act of Parliament?

And to these Arguments it may be added, that in the same Parliament of the 16th of Charles . cap. 14. when the *Dispensing Judgment* in the Case of the Ship Money, which had invaded the Right of Property, came to its Condemnation: The Parliament, in order to admonish the Judges, both of Law and Equity, and to obviate and extirpate all *Dispensing Powers*, and all Pretences for them, inserted this Clause, *And be it Enacted*, That the Statutes of this Realm shall be, by all the Kings Officers and Ministers firmly and strictly holden and observed, which cannot be, if *Magna Charta* and its Explanations be *Dispensed* with, for when a Dispenser shall cast the Maxims of Law, and the known Rules of Property, and the Statutes of the Kingdom behind his Back, and make his own Will stand for the Reason of his Judgment then a Dispensing Power is plainly visible, because it can never be Equity to *overthrow a Maxim of Law* when there is no equitable Reason to warrant it. In such a Case the Saying of *Philocles* the *Athenian* Captive, to the victorious,

rious, but cruel *Spartan*, *Lyfander*, who taunted and Insulted him as he was going to the Place of Execution, is applicable, viz. *Miserable is the Man who hath no Judge to hear his Cause*, (*Plutarch* 376) and such is the Man whose Judge is (or acts as if he were) Absolute; for the secret Will of such a Judge is the Law, which cannot be known till such his Will is pronounced.

But yet the unlimited Power of Determining *Matters of Trust*, which the Chancery as a Court of Equity appropriated to itself, as its own Creature, over which, it exercised an absolute Power, to Qualify according to their Discretions, and Dispose of it in a different Manner, than of Estates at common Law, and so may, by its Power, take away from one Man, and give to another, what Trusts that Court pleased, being not restrained by any Laws, but such only as that Court in its own Mind deemed Just and Equitable: And for that Reason this Discretionary Power became a general Grievance.

IV. And therefore the *fourth Instance* was, That in Order to Redress this Grievance by Introducing a Certainty in the Creation and Manifestation of *Trusts* of Lands, and of the *Persons* claiming those Trusts. The Legislature was pleased to make a Statute to prevent Frauds and Perjuries, 29 Car. 2. Anno Dom.

1677.

1677, and thereby to *Enact* in the strongest Words both Affirmatively and Negatively, that could be at that time, or can be now Devised or Invented, *That all Declarations and Creations of Trusts of Lands, shall be manifested and proved by some Writing, signed by the Party who is, by Law, Enabled to Declare such Trust, or by his last Will in Writing, or else they, (i. e. that all other Trusts, not so manifested and proved) shall be utterly Void To all Intents and Purposes.*

This Statute, if the Words signify the Will and Meaning of the Legislature, hath reduced the *Power* of the Chancery, and hath taken away from that Court the Examination and Determination of *Trusts of Lands*, for the Statute hath *Enacted*, That if Questions arise about the *Persons* claiming Trusts, and if an Issue be joined to Try this *Fact*, whether the *Person* claiming the Trust be the *Person* or not; the Statute hath in this Case appointed the *Manner* of what *Proof* shall be allowed, and what *Proof* shall be Disallowed, *viz.* Affirmatively, that the *Person* claiming the Trust shall *prove* himself to be the *Person* by such a *Writing*, as is *certain and manifest*, and as may be read in Evidence; and *Negatively*, that *conjectural Evidence*, either without *Writing*, or by a *Writing*, that is not *certain and manifest*, shall *not be Proof*, but shall be *Disallowed*; and that this *Fact* shall be Tried

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by a Jury, for *ad Questionem facti non Respondent Judices*; and therefore the Allowance of other Proof, contrary to this Statute, must necessarily be that *hainous Offence* which this Law was made to prevent.

It is impossible but Grievances will arise, for *humanum est Errare*; but in Cases where the Sovereign and Controuling Power of the Crown by the Chancellor, over the Subjects Liberty and Property, is made the Question, Whether there is such a Power or not, and if Judgments happen to be given, or Prohibitory Orders made, *contrary to Magna Charta*, and the Statutes aforesaid; there the Grievance must be, of all others, the most provoking, because such Orders cannot be made, or Judgments given, without a Mixture of a *Dispensing Power*: For when a *Dispensing Power* is assumed to unmake the Law, or to depart from the Law, and to make the Judge's Will stand for the Reason of his Judgment, there is Room for *Partiality*, viz. To take an Estate from one Man, and give it to such a Man, as can *acquire* most favour: And therefore when any such Grievance arises from a *Dispensing Power*, it is such a Vexation as *calls loudly* for Redress. Because all Judges ought to give and declare the *Reasons* of their Judgment, To the End the People may see and know whether the *Laws and Statutes*, which are to be strictly holden and observed, or the

Will

Will of the Judge are to stand as the *Reasons* for their Judgments.

But upon the *whole*, it is most evident and plain to all Men, That the Jurisdiction of a Court of Equity, in the Chancery, in the Manner it was at first Instituted, and to be Guided by the *Great Charter*, and by the said Acts of Parliament, is, by the said Acts of Parliament, set upon an equal Foot and Level (as to Matters within its Jurisdiction) with any other Court in *Westminster-Hall*: And is a *Noble Establishment*, and a *High and Honourable Jurisdiction*, and of most excellent Use and Benefit to all the People of this Nation, in all Cases where the common Law hath not *provided Remedies* to recover Back, or to Defend real Rights; because the Inclinations and Inventions of Mankind, to contrive Fraud and Injustice, and to subvert Right, and to evade the Justice of the common Law, or to make such a Use of the Rigour of it, beyond all Reason and Conscience, are increased, and become almost infinite: For in Multitudes of Cases, it has been upon Examination found, that Men by Fraud and Deceit, or by Breach of Trust and Confidence, and by other ill Practices, had got from weak People, and Possessed such Titles in Law to Lands, and other Estates, and Interests, as never could, by the rigorous and strict Rules of the common Law be defeated or avoided: And

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yet upon such Discoveries and Examinations as the Court of Chancery hath Enforced; It has been (as it is Expressed in the Statute of 17 R. 2.) *found and proved*, That such Wrong Doers have not, in Justice and Conscience, *any Right or Title at All* to the Lands and Estates they Possess: And therefore that Court hath justly Ordered, such Wrong Doers to Part with and Restore and Reconvey back *such Ill gotten Estates*, to the Right Owners; and consequently *perpetual Injunctions* are, in those Equitable Cases, not only Proper, but Necessary.

And in this Place a proper Question arises, touching the Power and *Authority* of this Court of Equity, as not being a Court of Record, *viz.* Whether the Ultimate Orders of this Court are *meerly Personal*, and Bind the Person only, and not the Estate and Interest, of the Party in the Lands or Goods in Question.

To which Question it may be answered, That in Cases, where Men have no Right, but what was gotten by Fraud, or Breach of Trust: There the Chancery may Decree, That those that have in Conscience the real Right, *shall Hold and Enjoy* the Lands, as well against Possessors by Fraud, as against Trustees: For it is the *Ground of Equity* in both Cases, that gives the Court a Jurisdiction and Power

Power to Bind the Interest, and to Defend the right Owners, in the Possession of their Lands and Tenements, against such Unconscionable Offenders.

But as to such Cases as Depend on meer Questions of Law, without any Mixture of Equity, To make the Case of one Party better than the Case of the other, there the *Strictum Jus*, or the Strictness according to the Maxims and Established Rules of the common Law, is the Right and Hereditary Privilege of every Man: And for that Reason, every Court of Equity is, by the Statutes aforesaid, Directed not to Interpose, nor to Order Perpetual Injunctions, to take from any Man his Legal Right and Property; nor, which is the same Thing, to take from him, or to Delay his Legal Remedy to Recover that Right.

But if Courts of Equity shall Extend their Jurisdiction, and Exceed those Bounds, in which the Statutes aforesaid have Compassed in, their Authority, and shall Grant Perpetual Prohibitions or Injunctions, to Prohibit or Command the Parties, to Desist for ever, from Prosecuting their Remedies, to Recover their Rights at common Law, I leave it as a Problem, Whether the Courts of common Law, may not by Force of *Magna Charta*, and the other Statutes of Explanation, Grant Prohibitions,

tions, Commanding the Parties to *Desist* from Prosecuting such Suits in Equity, as are out of the Jurisdiction of Courts of Equity, and of which the *Cognizance* belongs to the King's Courts of common Law; and by that Legal Means to Reduce the Judicial Administration of Equity within the Statute Boundaries.

The Matter of this *Research* is Doubtless *New and Difficult*, and different from the common Sentiments, The Writer therefore, being Sensible of his own Inability, Hopes and even Invites Those who are more Learned, to Engage in the Attempt: Forasmuch as the Knowledge Treated of, concerns in Effect, every Man; For who can foresee, but he, or his Children, or Friends, may become Suitors in Chancery: And therefore every good Man, that is able, ought to reach Assistance, To the End the *Defects* of this Research may be Supplied, and above all, That it may be Evinc'd, That *Judicandum est Legibus, non Edendum Leges*; and here, in Imitation of Cicero, I may say, *Habemus quidem Acta & Statuta, sed in Tabulis Recondita, & tanquam Gladia in Vaginis Deposita.*

Idly, As to the Judicature of the House of Lords, upon Appeals from Courts of Equity, and the Position, that That Jurisdiction, in the Dernier Resort, is a Branch of their Original and Fundamental Judicature.

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This Account may be given of that Matter, *viz.* That, that Question of Judicature, came into Debate between the two Houses of Lords and Commons in two Sessions of Parliament, held in the Year 1675, in the Case of Doctor *Shirley* and Sir *John Fagg*, a Member of the House of Commons, in whose Favour a Decree was made in Chancery against Doctor *Shirley*, concerning an Estate of 400 *l.* *per Ann.* from which Decree, *Shirley* Appealed to the Lords in Parliament: The Case, as it appeared in Chancery, was between two Purchasers, *viz.* *Shirley* Claimed the Lands in Question, under a Settlement made by his Great Grandfather, in the 9th Year of King *James* the first, whereby the Lands were Settled upon the Great Grandfather for his Life, Remainder to the Grandfather for his Life, Remainder to the Plaintiff's Father, by Name, for his Life, Remainder to the first Son (which the Plaintiff *Shirley* then was) of the Father, and the Heirs Male of his Body: The Plaintiff's Father was but Tenant for Life, and yet he Sold these Intailed Lands to the Earl of *Thanet*, and the Earl of *Thanet* Sold them to Sir *John Fagg* for 6870 *l.* And in some time after the Purchase, Sir *John Fagg* was threatened to be Evicted by this old Settlement, which had been all along concealed; but Sir *John Fagg* hearing that the Settlement was in the Hands of one Mr. *Walter*, and being terrified

rified with Fear of the Loss of his Purchase, he, Sir *John*, found Means (perhaps not very Justifiable) to get the Settlement into his Power, from, and out of the Hands of Mr. *Walter*.

Shirley, the Son, brought his Bill in Chancery against Sir *John Fagg*, in which he made Suggestions of this Matter, and the Relief he prayed was, to have a Discovery of the whole Matter, and to have the Deed of Settlement Delivered up to him, without which he could not prove his Title, or Prosecute his Remedy to Recover the Lands at common Law.

To which Bill Sir *John Fagg* pleaded in Bar to the Discovery; and to the Relief which *Shirley* prayed, That he was a fair Purchaser of the Lands in Question, and had paid a valuable Consideration for them, without any Manner of Notice of the Settlement; for if he had had such Notice, he had never Purchased.

The Lord Chancellor *Clarendon*, Assisted by *Bridgman*, Lord Chief Justice of the Common Pleas, and Mr. Justice *Archer*, upon hearing the Cause, and the Merits of the Plea, were of Opinion, That Sir *John Fagg* being a fair Purchaser, without Notice, and having gotten that Settlement into his Hands, which would, if he parted with it, utterly Defeat
his

his Purchase: A Court of Equity had no Power to Disarm him of that Advantage, (tho' possibly gotten by unfair Means) And therefore Ordered *Shirley's* Bill to be Dismissed, and to leave him to such Remedy, as he could obtain at the common Law. And *Shirley* Appealed to the Lords in Parliament.

But the House of Commons were so Angry at this Appeal, which Acknowledged the Jurisdiction of the Lords, to hear Appeals from Courts of Equity: That they committed not only Doctor *Shirley* for Appealing, but their own Member Sir *John Fagg*, for Submitting to that Appeal, upon which a famous Controversy Ensued.

The Arguments of both Houses, seem to be Grounded on general Declarations, and Resolutions, without offering on either Side, any Evidence, that was Clear or Conclusive, or by which, either House was, or was likely to be, by the other, Convinced.

The Lords Argued and Resolved, That what the Commons had done in Committing Doctor *Shirley* for Appealing, and his Council for Arguing for him at the Lords Bar, was a Transcendent Invasion of the Rights and Liberties of the Subject, and against *Magna Charta*, and other Laws, which had pro-

vided that no Man should be Imprisoned, but by due Course of Law.

The Commons Argued, That they could not find, by *Magna Charta*, or by any other Laws, that the House of Lords had any Jurisdiction, in Cases of Appeals, from Courts of Equity.

The Lords Replied and Argued, and Especially the Argument of the Earl of *Shaftsbury*, in their House, was formed in a Declamatory Manner, consisting of General and Positive Assertions, without Descending to the Bottom, or Producing any Evidence to Prove his Assumptions: Which however were extremely Moving and Captivating.

But to these Arguments of the Lords, it might have been Added on their Side, That the Notion of the Commons did necessarily Suppose that the Lords, when They, in their Legislative Capacity, gave their Assent to the Statute of 37 E. 3. cap. 18, whereby it was Enacted, That the Grievances complained of should be Redressed, by Removing the Suggestions made to the King himself, from before his Majesty, and sending them before the Chancellor, who, as Representing the King should Examine, Hear and Determine the Truth of them, and make such Orders there
upon

upon, as should be Just and Equitable; saving always that those Orders should not Change or *Dispense* with, or Offend, or Disannul any Point of *Magna Charta*, or the common Law of the Land, or that the Lords, when They, in their Legislative Capacity, consented to all the other Acts of Parliament, which were made to Compass in, and Guide the Chancellor in his Judgment and Administration.

I say that it must be extravagant to think, Either, that the Lords in so doing did, or did Intend, to set up a Judicature, whose Orders should be final, without Appeal, and Exclude themselves from Revising and Correcting those Orders, or that the Commons when they Consented to the Institution of that new Jurisdiction, ever Intended any such Exclusion; in Regard the Justice or Injustice of those Orders, could never be Examined, or Measured, or Judged of, Whether the Appellant is, or is not Injured or Damnified, *contrary to Magna Charta*, and the common Law: Without considering the Nature and Extent of those Orders, Appealed from, and Comparing them with the *Standard* called *Magna Charta*, and the Statutes of Explanation, to which the Lords had given their Legislative Assent, and then to Determine the Question, Whether the Orders Complained of do, or do not Offend or *Dispense* with, or Disannul any Point of those Statutes, or the common Law; which is the

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proper Business of the Supreme Judicature, in the Dernier Resort, For the Original Root of Judicature Vested in the Lords, is to Examine and Correct the Errors of Judgments, in the King's Bench and other Courts of Law brought before them, by Writs Error: In which Case the Lords are Judges of Judgments, in the Dernier Resort, which is the Supreme Judicature, that was always Used and Exercised, as their Fundamental Right and Privilege, and was never Questioned or Denied.

And therefore if Arguments *a Majori* are forcible, that is, if the Maxim of Reason, that *Majus continet in se Minus*, that is, That the Greater contains the Less, be True; Then it may be Argued, That since the Lords are Judges of the highest Questions of Law, concerning meer Right and Property; They must be much more Judges of Collateral Equitable Circumstances, that Attend that Right and Property, for *Equitas sequitur Legem*: To which it may be Added, that *Justice* Depends on the *Truth* of Facts; The Tryal of which *Truth*, is the Inferior Business of a Jury: And therefore the Lords in their Judicial Capacity, when they Hear and Determine upon Appeals from Courts of Equity, do in some sort Descend from their own Dignity: For as the Judges of Inferior Courts of Equity Act the Part of a Jury in Hearing the Evidence read, and Determining the *Truth*,

or *Untruth*, of the Suggestions: And after that, They Act the Superior Part of a Judge, in *Determining* what is Equity, and Natural Justice; Resulting from those *Facts*: So the Lords do Proceed in the same Manner, and Act in some Sort, the Part of a Jury, in hearing the Evidence read to Prove the Matter of Fact, contained in the Suggestions, on which the Right is to be Determined; and consequently, if the foregoing Maxim of Reason be *True*, viz. That the Greater contains the Less, Then it must be Apparent, that what is here Stated, is strong, and has sufficiently Cleared and Proved; That the Judicature of the Lords in Parliament, upon Appeals from Courts of Equity, is *Included as a Lesser Branch*, in their Fundamental Judicature upon Writs of Error: and that this Position, and the Evidences offered to Prove it, cannot be Overturned; or so much as Encountred, with any Others, of Equal Authority.

From which Premisses it is plain, That the Lords have *two Capacities*, the one Legislative, and the other, the Supreme Judicial, Capacity; and therefore this Qualification of their Judicial Capacity, is always to be Remembered, and kept in Mind, and hoped for: That the Lords will be pleased to Observe That their *Judicial Capacity*, in the Dernier Resort, is compassed in, with the same Statute Boundaries, with which the Inferior Courts of Equity

Equity are Bounded; and that whensoever those Inferior Courts of Equity shall Exceed their Bounds, and shall make such Orders, or Grant such Injunctions or Prohibitions, as shall Change or Dispense with any Point of *Magna Charta*, or the common Law, without any Ground of Equity to Warrant such Orders: The Lords in Parliamen will (doubtless) Delight in Reforming those Excesses, and Reduce them to that Law, which their Lordships, in their Legislative Capacity, have Ordered and Enacted to be strictly Holden and Observed, and which, in common Justice, ought to be the Standard, and Rule of Property, and above all, It is Depended on, That whenever a Decree shall, in any Part, *Resemble a Dispensing Power*, contrary to what the Lords have in their Legislative Capacity made a Law, and Rule of Justice, and Property; Such a Decree shall receive, from their Lordships, all Manner of *Discountenance*.

F I N I S.